United States Court of Appeals
for the
District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1908. 564

THE AMERICAN BONDING COMPANY OF BALTIMORE, A CORPORATION, APPELLANT,

vs.

UNITED STATES OF AMERICA TO THE USE OF MARY ANN LUCAS, GUARDIAN OF THE PERSON AND ESTATE OF ROSETTA LUCAS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MAY 23, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1908.

No. 1908.

THE AMERICAN BONDING COMPANY OF BALTIMORE,
A CORPORATION, APPELLANT,

vs.

THE UNITED STATES OF AMERICA TO THE USE OF
MARY ANN LUCAS, GUARDIAN OF THE PERSON AND
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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 28, 1908.

In the Court of Appeals of the District of Columbia.

No. 1908.

The American Bonding Co. of Balto., a Corporation, Appellant,
vs.
United States of America to the Use of Mary Ann Lucas,
Guardian, &c.

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a Supreme Court of the District of Columbia.

At Law. No. 50288.

United States of America to the Use of Mary Ann Lucas,
Guardian of the Person and Estate of Rosetta Lucas, Plaintiff,
vs.
The American Bonding Company of Baltimore, a Corporation,
Defendant.

United States of America, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration, &c.*

Filed February 27, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50288.

United States of America to the Use of Mary Ann Lucas,
Guardian of the Person and Estate of Rosetta Lucas, Plaintiff,
vs.
The American Bonding Company of Baltimore, a Corporation,
Defendant.

1. The plaintiff, The United States of America to the use of Mary Ann Lucas, duly appointed guardian of the person and estate of Rosetta Lucas, an infant under the age of twenty-one years, and one

of the next of kin of Frank Lucas, deceased, sues the defendant, The American Bonding Company of Baltimore, a body corporate, doing business and having an office and an agent in the District of Columbia, for money payable by the defendant to the plaintiff, for that heretofore, to-wit, on the Thirty-first day of July, 1903, the said defendant, The American Bonding Company of Baltimore, a body corporate, as surety, and the said Cornelious A. Berkeley, as principal, by their certain writing obligatory, sealed with their seals, the day whereof is the day and year last aforesaid, and a copy of which under the hand and seal of the Register of Wills is now here shown to the Court, which is known as an additional bond, and
2 which was duly approved on August 3rd, 1903, acknowledged
themselves to be indebted to the United States of America, the plaintiff in this case, in the full sum of three thousand dollars ($3,000), for the payment of which the said defendant, The American Bonding Company of Baltimore, a body corporate as aforesaid, and the said Cornelious A. Berkeley, did bind themselves, and their and each of their heirs, executors, administrators, successors and assigns, jointly and severally. And the plaintiff further says that before the time aforesaid, on, to-wit, the Twenty-fourth day of July, 1903, the said Cornelious A. Berkeley was appointed administrator of the estate of Frank Lucas, deceased, by the Supreme Court of the District of Columbia, holding a Special Term for Probate Business, in the proceedings entitled on the records of said Court "In the matter of the estate of Frank Lucas, deceased," being known therein as Probate No. 11,599; that subsequent to his said appointment as administrator of the said estate, the said Cornelious A. Berkeley duly qualified as said administrator by making the oath required by law and entering into and delivering the bond heretofore mentioned, and another bond, the said additional bond containing the following terms and condition:

"Whereas, heretofore, to wit, on the 28th day of July, A. D. 1903, the above bounden Cornelious A. Berkeley executed a bond, with surety approved by the Court, to well and truly administer the estate of Frank Lucas, deceased;

And whereas it now appears that additional security is required of the said above bounden Cornelious A. Berkeley for the administration of said estate;

Now, therefore, the condition of the above obligation is such, that if the above bounden Cornelious A. Berkeley shall well and truly
comply with the terms and conditions of said bond hereto-
3 fore given by him on the 28th day of July, A. D. 1903, then
the above obligation shall be void; it shall otherwise be and remain in full force and virtue in law."

the terms and conditions of the said bond executed on July 28th, 1903, being as follows:

"Whereas, the above bounden Cornelious A. Berkeley is about taking out from the Supreme Court of the District of Columbia letters of administration on the estate of Frank Lucas, late of the District of Columbia, deceased;

Now, therefore, the condition of the above obligation is such, that if the above bounden Cornelious A. Berkeley shall well and truly administer, according to law, all the money, goods, chattels, rights and credits of the said deceased, and the proceeds of all his real estate that may be sold for the payment of debts, which shall at any time come to his possession, or to the possession of any other person for him, and shall, in all other respects, faithfully perform the trust reposed in him, without injury or damage to any person interested in the same, then the above obligation shall be void; it shall otherwise be and remain in full force and virtue in law."

That thereafter there came into the hands of the said administrator the sum of one thousand, seven hundred and fifty dollars ($1,750), being the amount of a compromise of a claim of the said estate against the Southern Railroad Company, in pursuance of an order of the said Probate Court; that thereafter, the said Berkeley filed in the Probate Court aforesaid, what purported to be an account of the funds received by him as administrator; that to the said account certain exceptions were taken, which exceptions were in part subsequently allowed by the Court by an order issued by that Court dated the Second day of February, 1904, and in which order the said administrator was further directed to pay to the plaintiff
herein, the balance due, to-wit, the sum of one thousand, one
4 hundred and fifty-six dollars and thirty-four cents
($1,156.34), being the amount found by said order to be due by the said Berkeley to Mary Ann Lucas, guardian of Rosetta Lucas, an infant, and one of the next of kin of the said Frank Lucas, deceased, which said order, in so far as it is material to this declaration, reads as follows:

"It is further ordered that the balance shown by said account, after the disallowance as aforesaid, the said balance, amounting to one thousand, one hundred and fifty-six dollars and thirty-four cents ($1,156.34) be paid on or before the Fifth day of February, A. D., 1904, by said administrator, Cornelious A. Berkeley, to Mary Ann Lucas, guardian of the infant, Rosetta Lucas."

That thereafter, on the Sixteenth day of November, 1906, and after the passage of the foregoing decree, the said Berkeley rendered what purported to be a final account, whereby he showed that he had in his possession the sum of one thousand and forty-five dollars and eighty-five cents ($1,047.85), as the balance due the said infant, Rosetta Lucas, and the sum of fifty-seven dollars and twenty-six cents ($57.26), being the balance on hand and due to said Mary Ann Lucas as guardian by reason of the acceptance by Mary Ann Lucas of four hundred and sixty-six dollars and sixty-six cents ($466.66) in lieu of her distributable share as one of the next of kin, in the sum of five hundred and twenty-three dollars and ninety-two cents ($523.92).

And the plaintiff further says that the said Cornelious A. Berkeley, after the bonds hereinbefore referred to had been duly approved, did enter upon his said office as administrator, and has held and
still holds the same; but that the said Cornelious A. Berkeley
5 acting as administrator as aforesaid, has not well and truly
administered, according to law, all the money, goods, chattels,

rights and credits of the said deceased, Frank Lucas, that have come into his possession, nor has he in all other respects, faithfully performed the trust reposed in him, without injury or damage to any person interested in the same, in this, that the said Cornelious A. Berkeley failed and refused, and still refuses to make full settlement of said amount of money in his hands, or to deliver or pay all of said money to the said plaintiff, as guardian, for the use and benefit of the said Rosetta Lucas, the next of kin of the said Frank Lucas, and a party interested in the moneys so received as aforesaid, but has only paid to said Mary Ann Lucas, guardian as aforesaid, the sum of one hundred and fifty dollars ($150) in pursuance of said order of Court on April 3rd, 1907; that thereafter, to-wit, on the 11th day of February, A. D., 1908, the Supreme Court of the District of Columbia, holding a Special Term for Probate Business, after a consideration of a rule to show cause issued against said Berkeley why he should not be punished for contempt of Court in failing to pay over said balance, passed an order in said Probate Cause No. 11,599, in the matter of the estate of Frank Lucas, deceased, in which the said Berkeley, as administrator, was ordered to pay over to the said Mary Ann Lucas, as guardian, the balance due under the account of the said administrator filed in said probate cause, on or before February 17th, 1908, but the said Berkeley has failed and refused, and still refuses to comply with the order of Court passed therein on February 2nd, 1904, or any other order therein directing
6 the payment of said money, and to pay over to said guardian as aforesaid, the balance due to her for the benefit of said infant, to-wit, the sum of nine hundred and fifty-five dollars and eleven cents ($955.11), and the said sum of nine hundred and fifty-five dollars and eleven cents ($955.11) is still due and unadministered by the said administrator, contrary to the writing obligatory heretofore referred to.

And the plaintiff further says that notwithstanding the said additional bond and the conditions thereto annexed, that the conditions have been broken as aforesaid, and the said American Bonding Company of Baltimore, a corporation as aforesaid, although often requested so to do, has failed and refused, and still refuses to pay to the plaintiff anything by reason of its liability under said bond on account of the said sum of nine hundred and fifty-five dollars and eleven cents ($955.11), due by reason of said writing obligatory, hereinbefore referred to, to the damage of the plaintiff.

And the plaintiff claims of the said American Bonding Company of Baltimore, a body corporate as aforesaid, the sum of nine hundred and fifty-five dollars and eleven cents ($955.11), together with interest on the said sum of one thousand and forty-seven dollars and eighty-five cents ($1047.85), from the Second day of February, 1904, to the 3rd day of April, 1907, and interest on the sum of eight hundred and ninety-seven dollars and eighty-five cents ($897.85) from said 3rd day of April, 1907, and also interest on the sum of
7 fifty-seven dollars and twenty-six cents ($57.26) to the 16th day of November, 1906, besides costs of suit.

2. The plaintiff, The United States of America to the use of Mary

Ann Lucas, duly appointed guardian of the person and estate of Rosetta Lucas, an infant under the age of twenty-one years, and one of the next of kin of Frank Lucas, deceased, further sues the defendant, The American Bonding Company of Baltimore, a body corporate, doing business and having an office and an agent in the District of Columbia, for money payable by the defendant to the plaintiff, for that heretofore, to-wit, on the 28th day of July, 1903, the said defendant, The American Bonding Company of Baltimore, a body corporate, as surety, and the said Cornelious A. Berkeley, as principal, by their certain writing obligatory, sealed with their seals, the day whereof is the day and year last aforesaid, and a copy of which under the hand and seal of the Register of Wills is now here sh*wo*n to the Court, which was duly approved on said date, acknowledged themselves to be indebted to the United States of America, the plaintiff in this case, in the further sum of five hundred dollars ($500), for the payment of which the said defendant, The American Bonding Company of Baltimore, a body corporate as aforesaid, and the said Cornelious A. Berkeley, did bind themselves, and their and each of their heirs, executors, administrators, successors and assigns, jointly and severally. And the plaintiff further says that before the time aforesaid, on, to-wit, the Twenty-fourth day of July, 1903, the said Cornelious A. Berkeley was appointed
administrator of the estate of Frank Lucas, deceased, by the
8 Supreme Court of the District of Columbia, holding a Special
Term for Probate Business, in the proceedings entitled on the records of said Court "In the matter of the estate of Frank Lucas, deceased," being known therein as Probate No. 11,599; that subsequent to his said appointment as administrator of the said estate, the said Cornelious A. Berkeley duly qualified as said administrator by making the oath required by law and entering into and delivering the bond heretofore mentioned, containing the following terms and condition:

"Whereas, the above bounden Cornelious A. Berkeley is about taking out from the Supreme Court of the District of Columbia letters of administration on the estate of Frank Lucas, late of the District of Columbia, deceased;

Now, therefore, the condition of the above obligation is such, that if the above bounden Cornelious A. Berkeley shall well and truly administer, according to law, all the money, goods, chattels, rights and credits of the said deceased, and the proceeds of all his real estate that may be sold for the payment of debts, which shall at any time come to his possession, or to the possession of any other person for him, and shall, in all other respects, faithfully perform the trust reposed in him, without injury or damage to any person interested in the same, then the above obligation shall be void; it shall otherwise be and remain in full force and virtue in law."

That thereafter there came into the hands of the said administrator the sum of one thousand, seven hundred and fifty dollars ($1,750), being the amount of a compromise of a claim of the said estate against the Southern Railway Company, in pursuance of an order of the said Probate Court; that thereafter, the said Berkeley

filed in the Probate Court aforesaid, what purported to be an account
of the funds received by him as administrator; that to the said ac-
count certain exceptions were taken, which exceptions were
9 in part subsequently allowed by the Court by an order issued
by that Court dated the Second day of February, 1904, and
in which order the said administrator was further directed to pay to the plaintiff herein, the balance due, to-wit, the sum of one thousand, one hundred and fifty-six dollars and thirty-four cents ($1,156.34), being the amount found by said order to be due by the said Berkeley to Mary Ann Lucas, guardian of Rosetta Lucas, an infant, and one of the next of kin of the said Frank Lucas, deceased, which said order, in so far as it is material to this declaration, reads as follows:

"It is further ordered that the balance shown by said account, after the disallowance as aforesaid, the said balance, amounting to one thousand, one hundred and fifty-six dollars and thirty-four cents ($1,156.34) be paid on or before the Fifth day of February, 1904, by said administrator, Cornelious A. Berkeley, to Mary Ann Lucas, guardian of the infant, Rosetta Lucas."

That thereafter, on the sixteenth day of November, 1906, and after the passage of the foregoing decree, the said Berkeley rendered what purported to be a final account, whereby he showed that he had in his possession the sum of one thousand and forty-five dollars and eighty-five cents ($1,047.85), as the balance due the said infant, Rosetta Lucas, and the sum of fifty-seven dollars and twenty-six cents ($57.26), being the balance on hand and due to said Mary Ann Lucas as guardian by reason of the acceptance by Mary Ann Lucas of four hundred and sixty-six dollars and sixty-six cents ($466.66) in lieu of her distributable share as one of the next of kin, in the sum of five hundred and twenty-three dollars and ninety-two cents ($523.92).

10 And the plaintiff further says that the said Cornelious A. Berkeley, after the bond hereinbefore referred to had been duly approved, did enter upon his said office as administrator, and has held and still holds the same; but the the said Cornelious A. Berkeley acting as administrator as aforesaid, has not well and truly administered, according to law, all the money, goods, chattels, rights and credits of the said deceased, Frank Lucas, that have come into his possession, nor has he in all other respects, faithfully performed the trust reposed in him, without injury or damage to any person interested in the same, in this, that the said Cornelious A. Berkeley failed and refused, and still refuses to make full settlement of said amount of money in his hands, or to deliver or pay all of said money to the said plaintiff, as guardian, for the use and benefit of the said Rosetta Lucas, the next of kin of the said Frank Lucas, and a party interested in the moneys so received as aforesaid, but has only paid to said Mary Ann Lucas, guardian as aforesaid, the sum of one hundred and fifty dollars ($150) in pursuance of said order of Court; that thereafter, to-wit, on the 11th day of February, 1908, the Supreme Court of the District of Columbia, holding a Special Term for Probate Business, after a consideration of a rule to show cause issued against said Berkeley why he should not be punished

for contempt of Court in failing to pay over said balance, passed an order in said Probate Cause No. 11,599, in the matter of the estate of Frank Lucas, deceased, in which the said Berkeley, as administrator, was ordered to pay over to the said Mary Ann Lucas, as 11 guardian, the balance due under the account of the said administrator filed in said probate cause, on or before February 17th, 1908, but the said Berkeley has failed and refused, and still refuses to comply with the order of Court passed therein on February 2nd, 1904, or any other order therein directing the payment of said money, and to pay over to the said guardian as aforesaid, the balance due to her for the benefit of said infant, to-wit, the sum of nine hundred and fifty-five dollars and eleven cents ($955.11), and the said sum of nine hundred and fifty-five dollars and eleven cents ($955.11) is still due and unadministered by the said administrator, contrary to the writing obligatory heretofore referred to.

And the plaintiff further says that notwithstanding the said bond and the condition thereto annexed, that the said conditions have been broken as aforesaid, and the said American Bonding Company of Baltimore, a corporation as aforesaid, although often requested so to do, has failed and refused, and still refuses to pay to the plaintiff anything by reason of its liability under said bond on account of the said sum of nine hundred and fifty-five dollars and eleven cents ($955.11), to the damage of the plaintiff.

And the plaintiff claims of the said American Bonding Company of Baltimore, a body corporate as aforesaid, the further sum of five hundred dollars ($500), besides costs of this suit.

LAMBERT & McLEAN,
RUDOLPH H. YEATMAN,
Attorneys for Plaintiff.

12 The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and Legal Holidays, next occurring after the date of service hereof; otherwise judgment.

LAMBERT & McLEAN,
RUDOLPH H. YEATMAN,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

Mary Ann Lucas, being first duly sworn, on oath deposes and says that she is the use plaintiff in the above entitled cause, and brings this suit as the guardian of the person and estate of Rosetta Lucas, an infant who is one of the next of kin of Frank Lucas, deceased; that she has, as such guardian, a good cause of action against the defendant, The American Bonding Company, and that said cause of action is as follows:

On the twenty-fourth day of July, 1903, one Cornelious Berkeley was appointed administrator of the estate of Frank Lucas, the deceased husband of plaintiff and father of the infant, Rosetta Lucas, by the Supreme Court of the District of Columbia, holding a Special Term for Probate Business, in the proceedings entitled on the records

of said Court as "In the matter of the estate of Frank Lucas, deceased," being known therein as Probate No. 11,599; that thereafter the said Berkeley qualified by making the oath required by law and by furnishing a bond to the United States in the sum of five hundred dollars ($500), executed by himself as principal and by the defendant, The American Bonding Company of Baltimore, as
13 surety, sealed with their seals and dated the 28th day of July, 1903, which bond was duly approved by the said Probate Court, and in which the said Berkeley and the said defendant acknowledged themselves to be indebted to the United States of America for the payment of which they did bind themselves, and their and each of their heirs, executors, administrators, successors and assigns, jointly and severally, upon the following condition, however,

"that if the above bounden Cornelious A. Berkeley, shall well and truly administer, according to law, all the money, goods, chattels, rights and credits of the said deceased, and the proceeds of all his real estate that may be sold for the payment of debts, which shall at any time come to his possession, or to the possession of any other person for him, and shall, in all other respects, faithfully perform the trust reposed in him, without injury or damage to any person interested in the same, then the above obligation shall be void; it shall otherwise be and remain in full force and virtue in law."

That thereafter there came into the hands of the said administrator the sum of one thousand seven hundred and fifty dollars ($1750) by reason of a compromise of a claim of the said estate against the Southern Railroad Company, in pursuance of an order of said Probate Court. That on the 31st day of July, 1903, the said defendant as surety, and the said Berkeley, as principal, entered into a further writing obligatory, known as an additional bond, which was sealed with their seals, and filed in said cause, and approved by said Probate Court on August 3rd, 1903, and in which they acknowledged themselves to be indebted to the United States of America in the full sum of three thousand dollars ($3000) for the payment of which they bind themselves, and their and
14 each of their heris, executors, administrators, successors and assigns, jointly and severally, upon the following condition, however,

"that if the above bounden, Cornelious A. Berkeley shall well and truly comply with the terms and conditions of said bond heretofore given by him on the 28th day of July, A. D. 1903, then the above obligation shall be void; it shall otherwise be and remain in full force and virtue in law."

That the said bond for three thousand dollars ($3000) was given as an addition to the said bond for five hundred dollars ($500), and that its condition adopts the condition of the five hundred dollar bond which is hereinbefore set forth, and that the conditions of each are to all intents and purposes the same.

That on February 2, 1904, there was entered in said Probate cause, an order, in which order certain exceptions to an account that had been rendered by the said Berkeley as administrator were in part allowed, and in which order the said administrator was directed to pay to plaintiff herein the balance due, to wit, the sum of one thousand one hundred and fifty-six dollars and thirty-four cents, being the amount found by said order to be due by the said Berkeley to Mary Ann Lucas, guardian of Rosetta Lucas, the infant who was one of the next of kin of the said Frank Lucas; that from said order allowing certain exceptions the said Berkeley noted an appeal to the Court of Appeals, but that subsequently the said appeal was docketed and dsimissed for want of prosecution, whereupon, and after a rule to show cause had been issued against him, the said Berkeley, 15 on November 16th, 1906, rendered a final account which was approved and passed in which he omitted the various items which had been disallowed by the decree of February 2, 1904, and which showed a balance due to said infant of one thousand forty-five dollars and eighty-five cents, and a further balance due said infant of fifty-seven dollars and twenty-six cents ($57.26), which arose by reason of the acceptance by Mary Ann Lucas, individually, of the sum of four hundred and sixty-six dollars and sixty-six cents ($466.66) in lieu of the sum of five hundred and twenty-three dollars and ninety-two cents ($523.92) her distributive share of said estate. That thereafter the said Administrator, on the 3rd day of April, 1907, paid the sum of one hundred and fifty dollars ($150); that thereafter the said Probate Court issued a rule against the said administrator to show cause why he should not be punished for contempt for failing to pay over the balance of said moneys and after considering the return thereon, made an order directing said administrator to pay said balance on or before February 17th, 1908. That the said Berkeley has failed and refused and still does refuse to pay over the balance due to plaintiff for the benefit of said infant, to-wit, the sum of nine hundred and fifty-five dollars and eleven cents ($955.11), and that the said sum of nine hundred and fifty-five dollars and eleven cents ($955.11) is still due and unadministered by the said administrator. That notwithstanding the conditions of the said bond and additional bond have been broken as aforesaid, the said defendant, the American Bonding Com- 16 pany of Baltimore, although often requested so to do, has failed and refused, and still does refuse, to pay to plaintiff the said sum of nine hundred and fifty-five dollars and eleven cents ($955.11), and there is still due to said plaintiff from the said defendant the sum of nine hundred and fifty-five dollars and eleven cents ($955.11), together with interest on the said sum of one thousand and forty-seven dollars and eighty-five cents ($1047.85) from the 2nd day of February, 1904, to the 3rd day of April, 1907, and interest on the sum of eight hundred and ninety-seven dollars and eighty-five cents ($897.85) from said 3rd day of April, 1907, and also interest on the sum of fifty-seven dollars and twenty-six cents ($57.26) from the 16th day of November, 1906, exclusive of all set offs and just grounds of defense.

MARY ANN LUCAS.

Subscribed and sworn to before me this 24th day of February, A. D., 1908.

[SEAL.] WALTER S. T. BROWN,
Notary Public, D. C.

17 *Pleas and Affidavit.*

Filed March 19, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50288.

THE UNITED STATES OF AMERICA to the Use of MARY ANN LUCAS, Guardian of the Person and Estate of Rosetta Lucas, Plaintiff,
vs.
THE AMERICAN BONDING COMPANY OF BALTIMORE, a Corporation, Defendant.

1. Comes now the defendant, The American Bonding Company of Baltimore, a corporation, and craves oyer of the bond mentioned in the first count of the declaration filed herein, and said bond having been shown to this defendant, it says that the plaintiff ought not to have or maintain against it the cause of action mentioned in said first count, because this defendant says that it is not indebted to the United States of America, the plaintiff herein, or to Mary Ann Lucas, Guardian of the person of the estate of Rosetta Lucas, the person for whose use this action is brought, in any sum whatever, and never was so indebted.

2. And for a further plea to said first count of said declaration the defendant, The American Bonding Company of Baltimore, a corporation, craves oyer of the bond in said first count of said declaration specified, and the same having been read to it, this defendant says that the plaintiff ought not to have or maintain its afore-
18 said action in said first count set out, because this defendant says that Cornelius A. Berkeley, administrator of the estate of Frank Lucas, deceased, appointed such by the Supreme Court of the District of Columbia, holding a special term for probate business in Administration No. 11,599, has well and truly and in all respects administered according to law all the money, goods, chattels, rights and credits of the said Frank Lucas, deceased, that ever came into the possession of him, the said Cornelius A. Berkeley, or into the possession of any other person for him, and this defendant further says that the said Cornelius A. Berkeley has in all other respects faithfully performed the trust reposed in him without injury or damage to any person interested in the same, and as to all of this, the defendant hereby tenders issue.

3. Comes now the defendant, The American Bonding Company of Baltimore, a corporation, and craves oyer of the bond mentioned in the second count of the declaration filed herein, and said bond having been shown to this defendant, it says that the plaintiff ought

not to have or maintain against this defendant the cause of action mentioned in said second count, because this defendant says that it is not indebted to the United States of America, the plaintiff herein, or to Mary Ann Lucas, Guardian of the person and estate of Rosetta Lucas, the person for whose use this action is brought, in any sum whatever, and never was so indebted.

4. And for a further plea to said second count of said declaration, the defendant, The American Bonding Company of Baltimore, a corporation, craves oyer of the bond in said second count of 19 said declaration specified, and the same having been read to it, this defendant says that the plaintiff ought not to have or maintain its aforesaid action in said second count set out, because this defendant says that Cornelius A. Berkeley, administrator of the estate of Frank Lucas, deceased, appointed such by the Supreme Court of the District of Columbia holding a special term for probate business in Administration No. 11,599, has well and truly and in all respects administered according to law all the money, goods, chattels, rights and credits of the said Frank Lucas, deceased, that ever came into the possession of him, the said Cornelius A. Berkeley, or into the possession of any other person for him, and this defendant, further says that the said Cornelius A. Berkeley has in all other respects faithfully performed the trust in him reposed, without injury or damage to any person interested in the same, and as to all of this, the defendant hereby tenders issue.

HAMILTON, COLBERT, YERKES &
HAMILTON,
Attorneys for Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, a Notary Public in and for the District of Columbia aforesaid, Thomas J. de Lashmutt, who being first duly sworn deposes and says that he is a citizen of the United States and has his business residence in the District of Columbia, in which place he is the Washington agent of the American Bonding Company of Baltimore, a corporation, duly incorporated, 20 and has authority from said Company to make this affidavit in its behalf, and has personal knowledge of the matters and things herein contained. He denies the right of the United States of America, or the right of Mary Ann Lucas, Guardian of the person and estate of Rosetta Lucas, an infant, the plaintiff in the declaration filed in this cause, to recover against the said American Bonding Company of Baltimore the whole or any part of the sum claimed, either in the first or second counts of said declaration. He says it is true that the American Bonding Company of Baltimore became surety upon two separate bonds of Cornelius A. Berkeley, administrator of the estate of Frank Lucas, deceased, appointed as such administrator by decree of the Supreme Court of the District of Columbia holding a special term for probate business in Administration Case No. 11,599, one of said bonds being in the penal sum of $500.00, and being the bond suid upon in the second count of said declaration, and the other of said bonds being in the penal sum of

$3,000.00, and sued upon in the first count of said declaration, but which said bonds are not set out *in extenso* either in said declaration or in the affidavit filed in support thereof. Affiant is unable to state that said bonds are accurately quoted and referred to in said declaration or affidavit, but affiant does state that said bonds were in the usual and ordinary form in which administration bonds are usually filed in the Office of the Register of Wills under decrees usually passed in administration cases in the Supreme Court of the District of Columbia holding Probate Court.

21 Affiant further says that he has no knowledge or information as to the precise amount of money which came into the possession of the said administrator, but he says that the said Cornelius A. Berkeley has well, and faithfully accounted for and paid over to the persons entitled thereto all the goods, chattels, rights and credits of the said Frank Lucas, deceased, which came into his possession, to wit, to Rosetta Lucas and to Mary Ann Lucas, Guardian of the person and estate of Rosetta Lucas, a minor.

Affiant further says that the said Berkeley has in all other respects faithfully performed the trusts reposed in him as administrator as aforesaid, without injury or damage to any person interested in the estate of the said Frank Lucas, and has well and truly administered according to law all the said money, goods, chattels, rights and credits of the said deceased which at any time ever came into his possession or into the possession of any other person for him, and that the said Berkeley never came into the possession of the proceeds of the sale of any real estate belonging to said Frank Lucas, and that none of the real estate of the said Frank Lucas was ever sold for the payment of his debts.

Affiant further says that the said Cornelius A. Berkeley was never indebted in any sum whatever on account of his office of administrator of the said Frank Lucas, to Mary Ann Lucas, Guardian of the person and estate of said Rosetta Lucas, and he denies that the said Mary Ann Lucas, guardian as aforesaid, was ever entitled to receive any portion of the personal estate of the said Frank Lucas, all of which this affiant says the said American Bonding Company of Baltimore is prepared to prove at the trial of this cause. 22

THOS. J. DE LASHMUTT.

Subscribed and sworn to before me this 19th day of March, A. D. 1908.

[SEAL.]

JENNIE M. RYAN,
Notary Public.

Motion for Judgment under 73rd Rule.

Filed March 28, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50288.

UNITED STATES *ex Rel.* MARY ANN LUCAS, ETC.,
vs.
AMERICAN BONDING COMPANY, a Corporation.

Now comes the plaintiff and moves the Court for judgment against the defendant, the defendant having failed to file a sufficient affidavit as provided by the 73rd rule.

LAMBERT & McLEAN,
RUDOLPH H. YEATMAN,
Attorneys for Plaintiff.

To Messrs. Hamilton, Colbert, Yerkes and Hamilton, Attorneys for Defendant:

Please take notice that we will call the above motion to the attention of the Court on Friday the Third day of April, 1908, 23 at ten o'clock A. M., or as soon thereafter as counsel can be heard.

LAMBERT & McLEAN,
RUDOLPH H. YEATMAN,
Attorneys for Plaintiff.

Service of above motion acknowledged this 28th day of March, A. D., 1908.

HAMILTON, COLBERT, YERKES & HAMILTON,
Attorneys for Defendant.

(Endorsed.)

From the statement in the affidavit of defense that Berkeley "was never indebted" to the guardian, it becomes apparent that the prior statement that Berkeley "has paid over" all that came into his possession must be regarded as a conclusion rather than an averment of fact: therefore there is nothing to controvert the proposition that Berkeley has retained the money ordered to be distributed. The order of distribution is conclusive upon *him.*

Motion granted.

WRIGHT.

24 *General Bond.*

Case No. 11599.

Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

Know all men by these presents, That we, Cornelious A. Berkeley, principal, and the American Bonding Company of Baltimore, a body corporate incorporated under the laws of the State of Md. surety, are held and firmly bound unto the United States of America in the full sum of Five Hundred Dollars, current money of said United States, to be paid to the said United States, their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, successors and assigns, in and for the whole, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 28th day of July in the year of our Lord one thousand nine hundred and three.

Whereas, the above bounden Cornelious A. Berkeley is about taking out from the Supreme Court of the District of Columbia letters of administration on the estate of Frank Lucas late of the District of Columbia, deceased:

Now, therefore, the condition of the above obligation is such, That
if the above bounden Cor*en*lious A. Berkeley shall well and
25 truly administer, according to law all the money, goods,
chattels, rights and credits of the said deceased, and the proceeds of all his real estate that may be sold for the payment of debts which shall at any time come to his possession, or to the possession of any other person for him, and shall, in all other respects, faithfully perform the trust reposed in him, without injury or damage to any person interested in the same, then the above obligation shall be void; it shall otherwise be and remain in full force and virtue in law.

CORNELIOUS A. BERKELEY. [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE,
By L. O. DE LASHMUTT, *Attorney-in-Fact.*

[CORPORATE SEAL.]

Signed, sealed and delivered in the presence of—
ISABEL M. WHITE.

Approved July 28th, 1903.

J. C. PRITCHARD, *Justice.*

26 *Additional General Bond.*

Case No. 11599.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

Know all men by these presents, That we Cornelious A. Berkeley principal, and the American Bonding Company of Baltimore, a body corporate incorporated under the laws of the State of Md. surety, are held and firmly bound unto the United States of America in the full sum of Three Thousand Dollars, current money of said United States, to be paid to the said United States, their certain attorneys or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, successors and assigns, in and for the whole, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 31st day of July, in the year of our Lord one thousand nine hundred and three.

Whereas, heretofore, to wit, On the 28th day of July, A. D. 1903, the above bounden Cornelious A. Berkeley executed a bond, with surety approved by the Court, to well and truly administer the estate of Frank Lucas deceased:

And whereas it now appears that additional security is required of the said above bounden Cornelious A. Berkeley for the administration of said estate:

27 Now, therefore, the condition of the above obligation is such, That if the above bounden Cornelious A. Berkeley shall well and truly comply with the terms and conditions of said bond heretofore given by him on the 28th day of July, A. D. 1903, then the above obligation shall be void; it shall otherwise be and remain in full force and virtue in law.

CORNELIOUS A. BERKELEY. [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE,
By L. O. DE LASHMUTT, *Attorney-in-Fact.*

[CORPORATE SEAL.]

Signed, sealed and delivered in the presence of—
ISABEL M. WHITE.

Approved August 3rd, 1903.

J. C. PRITCHARD, *Justice.*

28 Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing are true copies of the original General Bond of Corneilous

A. Berkeley, Administrator, approved July 28, 1903, and Additional General Bond of Cornelious A. Berkeley, Administrator, approved August 3, 1903, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, in the matter of the estate of Frank Lucas, deceased, Case No. 11,599 Adm. Doc. 31.

I further certify, That I have compared said copies with the original records in said office, and find them to be full, true and correct transcripts thereof.

Witness my hand and the seal of the said Probate Court, this 2nd day of April, A. D. 1908.

[SEAL.] WM. C. TAYLOR,
Deputy Register of Wills for the
District of Columbia, Clerk of the Probate Court.

29 Supreme Court of the District of Columbia.

MONDAY, *April* 6, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

At Law. No. 50288.

UNITED STATES OF AMERICA to the Use of MARY ANN LUCAS, Guardian of the Person and Estate of Rosetta Lucas, Pl't'f,

vs.

THE AMERICAN BONDING COMPANY OF BALTIMORE, a Corporation, Def't.

Upon consideration of the plaintiff's motion for judgment for want of duly verified pleas, it is ordered that said motion be, and hereby is granted.

Therefore it is considered that the plaintiff recover against the defendant Nine hundred, fifty-five and 11/100 dollars ($955.11) : with interest on Ten hundred, forty-seven and 85/100 dollars ($1047.85) from February 2, 1904, to April 3, 1907, and interest on Eight hundred ninety-seven and 85/100 dollars ($897.85) from April 3, 1907, to this date, and interest on Fifty-seven and 26/100 dollars ($57.26) from November 16, 1906, to this date, being the money payable by it to the plaintiff by reason of the premises, together with the costs of suit, to be taxed by the Clerk, and have execution thereof.

* * * * * * *

30 Now comes here the defendant by its Attorneys and notes an appeal to the Court of Appeals of the District of Columbia from the judgment rendered herein, and upon motion, the penalty of the bond on said appeal to act as a Supersedeas is hereby fixed in the sum of Twenty-five hundred dollars ($2500.).

It is by the Court ordered that the January Term 1908 of the Supreme Court of the District of Columbia be, and the same is hereby prolonged for the period of thirty-eight (38) days for the purpose of settling the bill of exceptions in this cause.

Memorandum.

April 20, 1908.—Appeal bond (supersedeas) filed.

Directions to Clerk for Preparation of Transcript of Record.

Filed April 30, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50288.

UNITED STATES to Use of MARY ANN LUCAS, ETC.,
vs.
AMERICAN BONDING COMPANY.

John R. Young, Esq., Clerk:

Please prepare transcript of record for Court of Appeals in the above-entitled cause, and include therein the following:

31 1. Plaintiff's declaration and affidavit.
2. Defendant's pleas and affidavit.
3. Judgment of the court.
4. Noting of appeal, filing of bond and prolongation of term.
5. Bond on appeal.

M. J. COLBERT,
Attorney for Defendant.

Stipulation.

Filed May 7, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50288.

UNITED STATES to the Use of MARY ANN LUCAS, ETC.,
vs.
AMERICAN BONDING COMPANY.

Whereas, in making up the designation of record for the Court of Appeals in the above entitled cause, it appears from the papers in said cause that the certified copies of the two bonds of which profert was made in the declaration, and which were presented to, and considered by the trial justice on the hearing of the motion filed by plaintiff for judgment under the 73rd rule, were not stamped as filed at the time of said hearing, and it being desirous that the said certified copies be made a part of the record in the Court of
32 Appeals,

The undersigned, attorney of record for the defendant hereby stipulates and agrees that the clerk of the Court may file said certified copies of record as of the date of said hearing.

M. J. COLBERT,
Attorney for Defendant.

Additional Designation of Record.

Filed May 7, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50288.

UNITED STATES to Use of MARY ANN LUCAS, ETC.,
vs.
AMERICAN BONDING COMPANY.

John R. Young, Esq., Clerk:

Please include in the transcript of record for the Court of Appeals in the above entitled cause, heretofore ordered by the defendant, the following:

1. Motion for judgment under the 73rd rule, and endorsement of Wright, J., on the back thereof.
2. Certified copy of bond, and certified copy of additional bond, both of which are signed by the defendant as surety.

WILTON J. LAMBERT,
RUDOLPH H. YEATMAN,
Attorneys for Plaintiff.

33 The Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 32, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copies of which are made parts of this transcript, in cause No. 50288 At Law, wherein United States of America to the use of Mary Ann Lucas, Guardian of the person and estate of Rosetta Lucas is Plaintiff and The American Bonding Company of Baltimore, a corporation is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 23rd day of May, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1908. The American Bonding Co. of Balto., a corporation, appellant, *vs.* United States of America to the use of Mary Ann Lucas, guardian, &c. Court of Appeals, District of Columbia. Filed May 23, 1908. Henry W. Hodges, clerk.